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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1999

Addendum

# GEORGIA*

[15 November 1999]

* The initial report submitted by the Government of Georgia is contained in document CAT/C/28/Add. 1; for its consideration by the Committee, see documents CAT/C/SR. 278, 279, and the Official Records of the General Assembly, Fifty-second session, Supplement No. 44 (A/52/44, paras. 111-121). The enclosures referred to in the report may be consulted at the Office of High Commissioner for Human Rights.

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## Introduction

1. Georgia acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in September 1994. In Georgia it entered into force in November 1994. In accordance with the request in article 19 of the Convention, in June 1996 Georgia presented its initial report on measures of implementation in respect of its obligations within framework of the Convention.

2. The present report is the second periodic Report which covers the period 1996 to July 1999.

3. It has been prepared according to the Order of the President of Georgia under the guidance of the Deputy Secretary of the National Security Council of Georgia (consultative body to the President of Georgia) on Human Rights Issues. The same group of experts who drafted the initial report participated in drafting the second one. Information on the issues discussed in the report was obtained from the Prosecutor's Office, the Ministry of Internal Affairs and the Department on Human Rights Issues of the Apparatus of the National Security Council of Georgia. Some data were taken from the Annual Report of the Public Defender of 1998.

4. During the review period Georgia has taken many important steps to build a democratic society and the rule of law in the State. The legislative base has been completely renewed and made compatible with the provisions of the Constitution of Georgia and international obligations of the State and serves as a background for the implementation of large-scale socio-economic and political reforms.

5. The suitable conditions for implementation of the Convention against Torture have been formed in the State.

6. In order to fulfill the recommendations proposed after consideration of the initial report and aimed at the complete implementation of Georgia's international obligations, in June 1997 the President of Georgia issued the Decree "On Strengthening the Protection of Human Rights in Georgia" which is in force now. This document draws particular attention to the protection of the human rights of convicts and detainees, the conditions of their detention, their medical treatment, the corresponding training of the personnel of law enforcement institutions and strengthening public control (an official translation of the Decree in Russian is enclosed).

7. The reform of the judicial system, aimed at forming an entirely independent, just and honest judiciary in the framework of the rule of law, was accelerated. The Law "On the General Courts" and the Law "On the Supreme Court" adopted by the Parliament were major contributions to this reform. In the framework of judicial reform the most important role is given to the qualifying examination for judges. Thanks to the reform 70 per cent of the corpus of judges were renewed in regional, town and district courts, Supreme Courts of Autonomous Republics and in the Supreme Court of Georgia.

8. A serious contribution to the process of the advancement of reform was adoption of the new Criminal and Civil Procedure Codes by the Parliament of Georgia, which confirm the priority of judicial means in the protection of victims. According to the Criminal Procedure Code (Book X) the participants in the trial procedure – the accused, victim, civil plaintiff and defendant – have the right to demand hearing of the case not less than twice at the first and appeal instances, along with studying of specific evidence at appeal instance or at cassation, if envisaged by law. All participants having the status of a party, have the right to complain against the decision made by the Board of the Supreme Court as the court of first instance if decision has already entered into legal force. The Supervising Chamber of the Supreme Court hears such cases.

9. The Constitutional Court of Georgia is already established and exercises its powers envisaged by the Constitution of Georgia and by the Law "On the Constitutional Court".

10. During the review period Georgia acceded to one more treaty on human rights protection: the International Convention on Elimination of All Forms of Racial Discrimination (April 1999).

11. The major event of the recent history of Georgia was its entry into the Europe Council (April 1999). This confirms that the European Community highly appreciates the achievements of Georgia in building a legal society, and at the same time it lays great responsibility on our State in the sphere of the protection of human rights and fundamental freedoms. Georgia took the responsibility to accede to the Convention for the Protection of Human Rights and Fundamental Freedoms in the year following its entry into the Council of Europe (it was signed and ratified on entry to the European Union) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its Protocols. In the framework of the European Convention on Human Rights, our State acknowledged the jurisdiction of the European Court of Human Rights, to which our representative has already been elected. Article 6 of the Convention contains a ban on torture and the citizens of Georgia are entitled to the right to appeal to the European Court for violations of this article.

12. Before entering the Council of Europe Georgia fulfilled one of its main demands – capital punishment was abolished on 11 November 1997. Capital punishment was commuted to imprisonment for life. So the requirement of the Second Optional Protocol to the International Covenant on Civil and Political Rights was fulfilled as well.

13. Currently six persons are sentenced to imprisonment for life. Special places of detention for this category of convict have not yet been arranged. This fact was mentioned in the Annual Report of the Public Defender (Ombudsman) of Georgia in 1998.

14. The Parliament of Georgia took the decision to transfer responsibility for the penitentiary system from the Ministry of the Interior to the Ministry of Justice in January 2000. A lot of legal and organizational measures were taken for this purpose. On 22 July 1999 the Parliament of Georgia adopted the Law "On Serving Sentences", which will enter into force on 1 January 2000.

15. Within the legislative power, the Committee on Human Rights and Ethnic Minorities is functioning in the Parliament of Georgia. It has a Subcommittee on Penitentiary Reforms and the Rights of Detainees. Within its competence the Subcommittee not only conducts legislative activity but also protects the rights of persons whose freedom is restricted (not only convicts). The Committee exercises control functions as envisaged by the Constitution of Georgia.

16. In the executive branch, along with the ministries mentioned in the initial report, on the initiative of the President of Georgia in 1997 a Department on Human Rights Issues was established in the Apparatus of the National Security Council of Georgia headed by the Deputy Secretary of the National Security Council who, in addition to executive and coordinating functions, has control authority. In close collaboration with the apparatus of the Presidency and corresponding ministries and institutions the Deputy Secretary of the National Security Council makes a large contribution to the practical implementation of legal guarantees of human rights in the State.

17. To replace the abolished Committee on Human Rights and Ethnic Relations, a new institution of Public Defender was established in Georgia. "The Law on the Public Defender", elaborated with the help of international experts, awards the Ombudsman with wide powers in the field of revealing and investigating violations of human rights by State bodies. Most of the proposals and recommendations of the Public Defender for eliminating violations were taken into consideration and implemented by the State bodies (a detailed description of the Institute of the Public Defender and its activities is in the enclosed Annual Report of the Public Defender of 1998).

18. After the holding of the first ever elections of local bodies in 1998, Commissions on Human Rights Issues were established in most bodies of local authority.

19. Public opinion is firmly against using torture in Georgia. Each revealed fact is a subject of discussion and censure. A great contribution to the field has been made by NGOs and the mass media.

20. The mechanisms and procedures for a citizen's complaint of the use of torture described in the initial report remain in force, except for the Committee on Human Rights and Ethnic Relations, which has been abolished. Its functions, on a wider scale and with more efficiency, are exercised by the Public Defender. In accordance with the Constitution the Criminal Procedure Code contains guarantees for compensation and rehabilitation for victims who suffered from any kind of illegal act committed by representatives the State (chap. XXVIII, arts. 219-229).

21. However that cases of torture still occur is heavily documented. On one hand, the law enforcement institutions insist on giving false information on the use by them of illegal and impermissible measures of coercion; victims rarely on the other hand, risk complaining about torture used against them. Quite often narrow bureaucratic attitudes of those institutions impede conducting monitoring of the Convention against Torture. NGOs have gained access to penitentiaries in last two years. A lot of programmes have been carried out in penitentiaries (training on the rights of convicts, special broadcasts for them, medical examinations of convicts, courses for studying English, and so on). NGOs have provided human rights documents to penitentiaries. The Law "On Serving Sentences" envisages public monitoring of penitentiaries.

22. In spite of an increase in the number of citizens appealing to the courts, we consider that citizens do not always appeal to courts for protection even in the case of necessity. Besides the reasons given in the initial report, we have to point out that a majority of victims can't afford to pay the expenses of court procedures, which violates the right of citizens to access to the courts. It should be mentioned that after the appointment of new judges confidence in the courts has increased.

23. The Convention has already been translated into Georgian and disseminated among personnel of law enforcement institutions but in an insufficient number (about 2,000 copies).

**Articles 1 and 2 (General provisions)**

24. In the Constitution and the legislation of Georgia torture is definitely outlawed and its use cannot be based on any legal motivation and, even more, each person is awarded the necessary means for self-protection guaranteed by law.

25. The initial report contains information on the definition of the term "torture" in the legislation of Georgia. The Parliament adopted the new Criminal Code which envisages a special article on torture. its provisions are generally compatible with the definition given in the Convention against Torture. Besides, the Law "On Normtive Acts" declares international agreements and treaties as normative acts of Georgia and article 1 of the Convention is a part of Georgian legislation. The new Criminal Code was adopted by the Parliament of Georgia on 22 July 1999 and will enter into force on 15 February 2000.

26. The Criminal Procedure Code contains a special article 12 – "Personal immutability, protection of a person's honour and dignity", which says:

- Each person has the right to freedom, personal immutability, protection of his/her honour and dignity;
- Restriction of freedom is impermissible without legal grounds and in circumstances determined by law; the person detained or otherwise restricted in his/her freedom must immediately be made aware of the reason for such restriction;
- Detention of a suspect for more than 48 hours is prohibited. Arrest of a person or committing him/her into a medical institution for the purpose of medical examination is permissible only with the consent of a judge or a decision of a court. A judge, prosecutor, or investigator, ought immediately to release an illegally detained or arrested person;

- A person whose freedom was unlawfully restricted and without grounds has the right to full compensation for damages;
- The use of methods dangerous to the life or health of a party to a legal proceeding or other person or offending his/her honour and dignity is impermissible;
- In the conduct of investigative or court activities the use of threat, blackmailing, torture, and other forms of physical or psychological coercion is prohibited. To conduct medical experiments on detained or arrested persons is impermissible as is deprivation of food, sleep and water. On no account can detainee be kept in a building harmful to his/her health or offending his/her dignity.

27. In addition, the Criminal Procedure Code repeats the principle of the Constitution that "evidence obtained unlawfully has no legal force (art. 7). The Code the contains constitutional principle of presumption of innocence. Judicial control over the procedural activities of investigators and prosecutors connected with the restriction of constitutional rights and freedoms is established (art. 15).

28. The Code envisages the constitutional right of the suspect, accused and defendant to a defence (arts. 10,11). The powers of lawyers are significantly widened, which enables them to become rightful participants in the criminal procedure. With the consent of the Ministry of Justice foreign lawyers can participate in proceedings (art. 78, para. 8). The bodies which according to law carry out the criminal procedure before incrimination are obliged to appoint a lawyer with the defendants' consent (art. 80). Lawyers have the right to meet the defendant without impediment and in private. The administration of penitentiaries and investigative bodies of have no right to restrict the number and duration of appointments (art. 84, para. 5). The lawyer participates in investigative activities, collects information independently and delivers it as evidence to the competent bodies. The lawyer is also entitled to acquainted him/herself with the case materials relating to the accusation after the indictment and first interrogation of the accused person; upon completion of investigation, the lawyer has access to all case materials. The lawyer has the right to appeal against the activities of any official violating the defendant's right to a defence. The lawyer is authorized to participate at each stage of a trial and to appeal a court decision if necessary, etc. (art. 84).

29. However, beating and torturing to obtain evidences still exist. As mentioned in the Report of the Public Defender, evidence obtained this way in some cases plays a basic role in court decisions, and such decisions sometimes give rise to a grave suspicion. The personnel of law enforcement institutions are not often inclined to confess to the existence of cruel treatment, beatings, etc. even in obvious cases. The Public Defender, the Deputy Secretary of the National Security Council and the Subcommittee on Penitentiary Reform and the Rights of Detainees of the Parliament pay specific attention to such cases and thoroughly examine them. Two facts were presented in the Annual Peport of the Public Defender. Such cases as a rule become the matter of internal departmental investigation. But even in the cases when offenders are found guilty the official accusation will be, "exceeding of authority" or "abuse of power", etc.

30. The facts of torture for the purpose of obtaining evidence mainly happen at the stage of pretrial detention. It is obvious that in order to avoid the risk of torture it is sensible to reduce the use of detention as a measure of punishment. The new Criminal Procedure Code introduces new measures: house arrest, pledges and others. But courts do not actively use these measures. So according to the information of the Public Defender in 1998 there were only 32 cases of release under pledge while the measure of detention was used against 2,620 persons by the Ministry of Interior; 469 cases were later discontinued, 170 of them on the ground of absence of the proof event or of acorpus delicti.

31. Situation in Abkhazia. The political authorities of the State and law enforcement institutions express serious concern about conditions on the territory of Abkhazia (Georgia) – a self-declared republic, de facto existing beyond the jurisdiction of Georgia. The data collected by the Procuracy prove the permanent practice of mass and flagrant violations of human rights, conducted under orders issued by the separatist authorities. The collected materials on crimes committed in Abkhazia

comprise 200 volumes. Some 5,738 peaceful citizens have been killed in Abkhazia since beginning of the conflict, including 70 children and 706 women; 267,345 persons, mostly Georgians, were expelled from their homes. The Prosecutor's Office identified 20 organizers and inspirers of genocide and ethnic cleansing, and more than 800 executors of those crimes. Specific steps to punish the offenders have been taken. The Supreme Court has convicted several persons and orders for the arrest of 15 persons have been issued.

32. According to Amnesty International in 1998 capital punishment still remained in force in Abkhazia. In May the previous year 12 persons, including a woman accused of committing murder, were awaiting execution. According to this organization most arrests are of an ethnic character. Mostly ethnic Georgians are arrested and physically and verbally abused.

33. The fact of ethnic cleansing was recognized at the summits of the Organization for Security and Cooperation in Europe held in Budapest (1994) and Lisbon (1996). The international community has to make a political and legal appraisal of matters in this region and condemn ethnic cleansing and genocide as negative manifestations of aggressive separatism, which is incompatible with human rights.

**Article 3 (Expulsion, return or extradition of a person)**

34. According to the Criminal Procedure Code of Georgia (art. 256), in the framework of international treaties on mutual legal assistance a foreign State may demand the extradition of its citizen on the territory of Georgia if he/she is accused of committing a crime on the territory of his/her State, or has committed a crime against his/her State on the territory of Georgia. A request for extradition must correspond to rules established by international agreement and be made by the competent bodies. If the Prosecutor General of Georgia considers the request substantiated and lawful he/she gives instructions on its implementation and, if necessary, asks for the assistance the Ministry of Foreign Affairs.

35. A measure of detention, arrest or other form of legal compulsion against a person liable to extradition is permissible only if the request for extradition is accompanied by a court order allowing a measure which restricts the constitutional rights and freedoms of citizens. A foreign citizen arrested on the basis of a request for extradition can remain under arrest for not more than a month unless a new court order extends this term. A person liable to extradition may appeal to a court for his/her protection (art. 259).

36. The Criminal Procedure Code (art. 257) stipulates the conditions under which extradition is impermissible. Such cases are:

- The person has been granted political asylum in Georgia;
- The action that is a basis of a request for extradition is not considered a crime in Georgia;
- The person has already been sentenced for committing the same crime and the sentence has already entered into force or there exists a decision to discontinue the criminal case;
- The statute of limitations for the crime envisaged by the Criminal Code of Georgia has expired.

37. The extradition of stateless persons is regulated in the same way as for foreign citizens (art. 258, Criminal Procedure Code).

38. By ratifying the Convention against Torture Georgia made this international instrument a part of its domestic legislation. That means direct implementation of the Convention in practice. It seemed not to have been sensible to duplicate in domestic normative acts the ban on expulsion, extradition and return of a particular person to another State where there are substantial grounds for believing he/she

would be in danger of being subjected to torture. According to data from the Procuracy of Georgia, from 1996 to 1998 no request for the expulsion, return or extradition of a person was received.

39. Georgia, upon entry into the Council of Europe, took the responsibility to accede to the European Convention on Extradition, which will enforce the legal guarantees for the implementation of this article of the Convention against Torture. The articles containing sanctions on exile and expulsion were removed from the Criminal Code of Georgia. Those articles were mentioned in the initial report.

**Article 4 (Punishment for using torture)**

40. As mentioned in the initial report torture is a punishable offence according to Georgian legislation. Its definition does not c mpletely coincide with the definition given in article 1 of the Convention; perhaps that was the real reason that no "classical" acts of torture were identified during the review period (if such acts occurred).

41. On the basis of data obtained from the Procuracy of Georgia in 1997 criminal proceedings were instituted against 82 officials of the Ministry of Internal Affairs; in 1998, the figure was 46. Criminal proceedings were instituted against 20 staff of law enforcement institutions for beating or use of other forms of violence (in all 14 cases). Among them only 4 were found guilty and convicted. All other cases were sent to the courts and are under consideration. According to the gist of the cases no one is accused of committing an act of torture as a mean to obtain evidence. Most of the cases refer to cruel treatment by policemen.

42. Criminal proceedings were instituted against 34 policemen in 1998 for violations of human rights; 5 of them concerned physical coercion against citizens. On the basis of data from the Ministry of Internal Affairs, in 1998 five members were dismissed from the Ministry for exceeding their power, namely for illegal detention and physical abuse of citizens, and six were removed from their posts. For the same reason disciplinary measures were taken against 46 staff members of the police. Disciplinary proceedings were instituted against four members of the police staff for illegal detention and physical abuse of citizens.

43. The prosecutor General of Georgia established special control over the information disseminated through the mass media on incidents of violation of human rights and each case is examined. Still, the Procuracy admits that these cases need more thorough examination.

44. According to official data, in 1998 and in the first half of 1999 no case of torture during preliminary investigation for the purpose of obtaining evidence was identified. At the same time, at the court hearings some defendants declared that torture and other illegal measures of coercion had been used on them during the period of investigation. In all cases the court examined the materials in detail and decided that the complaints of the defendants were ill-founded. The judges considered that complaints on the use of unlawful means of investigation were aimed at avoiding punishment for a crime committed. At the same time, according to law if the court considers a complaint of a defendant of acts of torture to have a basis, it must require the Procuracy to re-examine the case.

45. Such a procedure took place in 1997. During the hearing of a case involving a group of persons who had committed grave crimes in the Supreme Court of Georgia, one of the defendants declared that illegal physical coercion had been used against him during pretrial detention. The Board on Criminal Cases of the Supreme Court decided that the conclusion of a forensic doctor, a medical certificate and a complaint by the defendant created a suitable basis for re-examination of the facts and requested the Procuracy of Georgia to do so. The investigation that was conducted failed to prove the validity of the complaint of the defendant.

**Article 5 (Jurisdiction of the State over the offence of torture)**

46. The legislative situation, presented in the initial report still remain in force; however, its extension over the whole territory is complicated in practice by the existence of the self-declared republics of Abkhazia and South Ossetia. The jurisdiction of our State is not exercised over these regions. However, these circumstances don't allow the State to avoid the responsibility determined by the Convention against Torture.

**Article 6 (Procedure for detention of a person alleged to have committed acts of torture)**

47. According to the Criminal Procedure Code of Georgia, detention of a person is a measure of compulsion envisaged by law. It is used in the case if a party to criminal proceedings puts obstacles in the way of investigative or court activities and does not fulfill the procedural obligations laid on him/her, or for the purpose of achieving the cessation of activities which impede the purposes of criminal proceedings (art. 133).

48. The new Criminal Code adds to the grounds for detention of a citizen reported in the initial report that a person suspected in committing a crime can be detained if after committing the crime, he/she went into hiding but was afterwards recognized by the victim, or a decision to search for the person search is issued (art. 142-1). At the same time, a person released from detention can not be detained again on the same suspicion (art. 142-3). After bringing a detainee to the police or to a competent body of inquiry, a detention protocol ought to be drawn up and signed by the person who drafted it, by persons empowered to carry out detention and by the detainee. Within 12 hours the legal basis of the detention must be verified, after which an authorized person of the body conducting the inquiry makes a motivated decision whether to institute criminal proceedings, or to release the detainee. The prosecutor is immediately informed of the gist of the decision. When the decision is to institute criminal proceedings against the detainee and the detainee is indicated, he/she is to be made aware of his/her rights in written form. A detained person ought to be interrogated not later than 24 hours after his/her detention. At a detainee's request he/she may be examined by a doctor after interrogation.

49. The term of detention before instituting criminal proceedings shall not exceed 48 hours. If in the 24 hours following the decision on arrest or other form of detention has not been made, the person must immediately be released.

50. A detainee must be released if:

- The suspicion that he/she committed a crime is not proved;
- The detention of a person is not necessary;
- The term of detention has expired;
- The provisions of the Criminal Procedure Code on detention were gravely violated.

51. Damage which was the result of illegal and groundless detention is fully compensated out of the State budget, regardless of whether a detainee is convicted (Criminal Procedure Code, arts. 146, 150).

52. A new provision in procedural legislation in the field of conducting inquiries is that an operative search measure before the institution of criminal proceedings which restricts the constitutional rights and freedoms of citizens may be carried out only with the consent of a judge. If the case involves infringement of the constitutional order or the security of the State the Board of the Supreme Court makes the decision (art. 65).

53. The number of bodies empowered to conduct inquiries has been considerably broadened. State security structures, frontier guards and State guards services are included on the list, for cases under their competence or cases concerning their personnel (art. 66).

54. The norms of domestic criminal procedure legislation and the Law "On Legal Status of Foreigners", which was described in detail in the initial report, are used in respect of citizens of foreign States not having diplomatic immunity and stateless persons.

55. A complaint concerning a on violation of this article of the Convention against Torture to the State bodies from a foreign citizen or stateless person has not yet been received.

**Article 7 (On prosecution of persons suspected of committing acts of torture)**

56. Article 14 of the Criminal Procedure Code declares that a person authorized to conduct an inquiry, an investigator, a prosecutor, a judge or a court while acting in the interest of the State and of the public is obliged to state the crime that has been committed and the person who committed it. For this purpose they are authorized to carry out all the activities envisaged by the Criminal Code. The protection of the legal interests of citizens during the criminal process benefits the interests of society. The restriction of the rights and freedoms of a person for the purpose of disclosing a crime and resolving a criminal case is permissible only on the grounds and in the manner prescribed by law.

57. Where there are indications that a crime has been committed, criminal proceedings are instituted by person authorized to conduct an inquiry, an investigator, a prosecutor or a judge. Public criminal prosecutions are conducted on all categories of crimes. The prosecutions are conducted by a prosecutor and an investigator on the basis of an application by a physical or juridical person, on the information of a State body and NGOs, and also on information from the mass media.

58. A person authorized to conduct an inquiry, an investigator and a prosecutor are obliged, in all cases where there are indications that a crime has been committed, to institute criminal proceedings publicly within their respective competence, take measures to disclose the crime and state the felon, and not permit the sentencing of an innocent person.

59. Not later than 48 hours after taking decision to institute criminal proceedings against a person, an investigator presents the decision to him/her and interrogates him/her. A prosecutor and a lawyer are allowed to be present at the interrogation. A victim and his/her representative have the right to support the State prosecution (Criminal Procedure Code, arts. 22, 24, 25).

60. At all stages of the criminal proceedings the principles of the equal access of all parties and the public nature of the proceedings are guaranteed (Criminal Procedure Code, arts. 14, 15). A party to the proceedings who does not have command of the language of the legal procedure has the right to use his/her own language or a language he/she knows well and he/she should be assisted by an interpreter (art. 17).

61. Court reform recently carried out in Georgia strengthened guarantees of fair and impartial hearing by the courts by establishing a new instance – a court of appeal. An appeal can be brought against a decision of the court of first instance which has not yet entered into force and is subject to obligatory hearing. A complaint can concern the substance of the decision as well as its legality. As a result, a new court hearing shall be conducted (Criminal Procedure Code, arts. 519, 520).

**Article 8 (Extradition)**

62. In addition to information on the provisions of the Convention against Torture, which hasn't changed during the review period, we have to indicate that the new Criminal Procedure Code stipulates procedures for a person the extradition of accused of committing a criminal offence.

63. According to article 247 of the Criminal Procedure Code and international treaties on legal assistance to which Georgia is a party, a court, a procuracy and an investigator with the assistance of the Ministry of Justice or the Procuracy of Georgia has the right:

- To request the extradition of a citizen of Georgia for the purpose of instituting criminal proceedings or the execution of court decision on the territory of Georgia;
- To request the extradition of a citizen of Georgia who was sentenced in a foreign State to a prison sentence to be served in Georgia;
- To extradite a citizen of a foreign State to serve his/her sentence in his/her country.

If a foreign State hasn't concluded a treaty on legal assistance with Georgia, such assistance can be rendered by concluding a special treaty on a concrete case between the Ministry of Justice or the Procuracy of Georgia and the corresponding authorities of another State.

64. On becoming a member of the Council of Europe, Georgia took the responsibility to accede to the European Convention on Extradition, in connection with which the implementation of preparatory measures has begun. In May 1999 an international seminar on various aspects of the European Convention on Extradition was held. Experts from the Council of Europe and representatives of competent bodies and NGOs, including human rights organizations, took part.

65. Georgia is a member of Interpol and the National Bureau of this organization functions in the State, and is authorized to carry out specific matters in connection with searching for persons.

**Article 9 (Legal Assistance)**

66. The Criminal Procedure Code envisages the carrying out of the following activities in the framework of legal assistance:

- To send a request to a foreign State to conduct procedural action; depending on the character of the action – investigation or trial – the request is to be sent by the Prosecutor General or the Ministry of Justice (art. 248);
- To call a citizen of a foreign State to participate in criminal case, with his/her consent, as a witness, victim, plaintiff, civil respondent or on application of an accused – as a lawyer or a legal representative (art. 250);
- To implement the requests of a foreign State to undertake an investigation and for trial of a citizen of Georgia (art. 251);
- To send all evidence concerning a crime committed by a citizen of a foreign State on the territory of Georgia to the competent bodies of the foreign State for the purpose of continuing a criminal prosecution, or to secure the extradition of the person concerned to Georgia if the person has left Georgia (art. 252);
- To examine and take a decision on a request by a foreign State to send all available evidence regarding a citizen of Georgia who has committed a crime on the territory of another State and returned to Georgia (art. 253);
- To send a request for extradition of a citizen of Georgia who has committed a crime on the territory of Georgia and has been convicted, or is accused of committing of a crime which is punishable by imprisonment for more than one year according to the criminal legislation of Georgia (art. 254);
- To extradite a citizen of a foreign State according to a request by this State (art. 256);
- To refuse an extradition on the basis of law (article 257) (see paragraph 35 of the present report);
- *To use a measure compulsion* contained in the Criminal Procedure Code against a person liable to extradition if the corresponding order (warrant) issued by a judge is available (art. 259);
- To transmit available material evidence and documents (art. 260).

67. Since the initial report Georgia has signed and ratified treaties on judicial assistance with the following States: Azerbaijan, Armenia, Bulgaria, Kazakhstan, Kyrgyzstan, Moldova, the Russian

Federation, Turkmenistan, Turkey, Ukraine, Uzbekistan. The treaty with Greece was signed but not yet ratified.

68. Georgia has also joined many multilateral international instruments – European Convention on Extradition of Convicts, European Convention on Judicial Assistance, Minsk Convention on Assistance on Civil, Family and Trade Affairs.

**Article 10 (On of training of personnel)**

69. As mentioned in the initial report, to determine that bodily injuries were caused by torture is in the competence of the forensic expert. But if earlier the purpose of forensic expertise was to ascertain the existence of injuries and their gravity, nowadays, according to the new Criminal Procedure Code, forensic experts are entitled to state circumstances important for the case which they were not asked for and include them in their reports (art. 364). If the expert discovers such circumstances on his/her "own initiative", he/she is obliged to mention them in his/her report (art. 371). In addition, an expert has the right to introduce in his/her report "circumstances which promoted the commitment of a crime and ... recommendations on their non-admission"(art. 371).

70. At the Academy of the Ministry of Internal Affairs, in the training of junior staff, in the framework of the courses "Political Culture and Ethics of Policemen" and "Special Tactical Training" particular attention is paid to the topic "Treatment by Policemen by Citizens". In accordance with the Decree of the President of Georgia, in the basic human rights documents, including the Convention against Torture, are studied at the Police Academy and the Academy of the Ministry of State Security.

71. Within the framework of the programme of assistance and technical cooperation between UNDP and the Office of the Public Defender, seminars on various aspects of human rights were held. They were attended by large groups of persons occupying high positions in law enforcement institutions (Police and State Security), judges and prosecutors. Well-known experts from Sweden, Norway, Germany took part in the seminars. Special attention was given to discussion of questions concerning the Convention against Torture. The seminars were of a "training of trainers" character. Afterwards (at the end of 1998 and beginning of 1999), the participants held similar seminars at the places under their authority. Holding such seminars had a positive effect for the law enforcement institutions and judicial structures.

**Article 11 (Review of procedures)**

72. Article 91 of the Constitution declares: "The Prosecutor's Office of Georgia is the institution of the judicial power which performs criminal prosecutions, supervises an inquiry and the execution of punishment and supports State prosecution".

73. These provisions were introduced in the Criminal Procedure Code and The Basic Law on the Procuracy (November 1998). They regulate the supervision of the functions of the Procuracy.

74. Within his/her jurisdiction a prosecutor supervises the legality of the conduct of inquiries envisaged by the procedural legislation as well as of decisions taken during these inquiries. For the purposes of article 11 a prosecutor must ensure:

- The legality of keeping a person in a place of temporary or pretrial detention or other place for the deprivation of liberty, execution of a sentence or other measure of constraint decided by a court.
- The observance of orders and conditions governing the presence of a person in the above-mentioned institutions as envisaged by law.

75. To carry out his/her duties a prosecutor is authorized: to examine places of detention and execution of sentence at any time; to interrogate persons subjected to any form of arrest, detention or imprisonment; to have access to documents providing the basis for the measures of constraint; to take immediate measures for the release of illegally detained or arrested persons; to repeal an illegal disciplinary measure and immediately a prisoner from an isolation or punishment cell; to revise orders, instructions, methods and administrative practices of penitentiaries in order to make them compatible with legislation, halt illegal activities and appeal against illegal acts, and demand explanations from the appropriate officials. According to the "Law on Procuracy" (art. 18), the request of a prosecutor is necessary for taking action in the above-mentioned cases.

76. At the inquiry stage a prosecutor ensures that the law is followed precisely and uniformly, in particularly that decisions and activities performed by the body conducting the inquiry are legal. In order to guarantee the constitutional function of criminal prosecution a prosecutor exercises procedural control over investigations, as determined by the Criminal Procedure Code. From this point of view he/she is authorized: to repeal an illegal decision of a body conducting an inquiry, an investigator, the head of the investigative body, a subordinate prosecutor; to remove an investigator from further investigation of a case if he/she violated the law; to cease or temporarily stop proceedings on a case if particular legal grounds for doing so emerge; to take a decision on the activities or decisions of bodies conducting a inquiry, an investigator or a head of an investigative body (Criminal Procedure Code, art. 56).

77. In accordance with the Constitution and legislation, a prosecutor's rights were significantly restricted in favour of court power. Thus, according to provisions of the Criminal Procedure Code only a court is to issue orders on procedural activities restricting the following constitutional rights and freedoms of citizens:

- Arrest and extension of detention of an accused person:
- Use of other measures of preventive punishment against an accused person;
- Put a person into a medical institution for forensic expertise (art. 47).

78. A suspect or an accused person whose freedom is temporarily restricted has the right:

- To receive a copy of the decision to institute criminal proceedings against him/her, including the nature of the charge, within 12 hours;
- To give or refuse to give evidence;
- To have the assistance of a lawyer and meet him/her in private for not more than an hour a day;
- After the first interrogation as a suspect, to demand a medical examination and receive a written report thereon;
- To announce solicitations and challenges;
- To submit a complaint about the activities or decisions of bodies conducting inquiries or investigations to a judge or prosecutor;
- To immediately inform relatives and friends about the place where he/she is being held;
- To get a complete explanation of his/her rights;
- To receive compensation for damage caused by illegal and groundless detention or groundless institution of criminal proceedings.

An accused person has the right to defend him/herself against a charge by means of all legal measures and methods, and have sufficient time and opportunity for preparation for a defence (Criminal Procedure Code, arts. 73, 75).

79. Unfortunately, the requirements of the legislation are not always implemented in practice. Based on data from the Procuracy and complaints addressed to the Public Defender and other human rights structures, there still exist cases of groundless detention of persons. The figures presented in

official reports on criminal proceedings instituted against officials of law enforcement institutions do not always reflect the real situation. The police authorities prefer to issue a warning, which is not a measure of punishment. In 1998 disciplinary measures were instituted against 46 policemen. There are very rare cases of institution of criminal proceedings on a charge of illegal detention. However, for the last two years strong monitoring of cases of illegal detention has been established by the Procuracy, NGOs and the mass media and the number of such cases has decreased.

80. According to law the following bodies are authorized to inspect places of detention: specialized structures of the Procuracy; the service on the protection of the rights of convicts in the Penitentiary Department of the Ministry of Interior; the Public Defender; the Deputy Secretary of the National Security Council of Georgia on Human Rights Issues. Since 1997 groups for the protection of the rights of convicts have been established. For the purpose of increasing the efficiency of their work zonal conferences and seminars are held each year.

81. In accordance with established orders, the staff members of the Red Cross and the local office of the OSCE have free access to penitentiaries and the right to meet convicts without the presence of other persons. Local NGOs must receive permission from the authorities but there are no impediments to them receiving such permission.

82. According to the Criminal Procedure Code (art. 243) decisions (orders, resolutions) made by a judge on the implementation of investigative activities which restrict the constitutional rights and freedoms of a citizen during the process of inquiry or preliminary investigation or upon the arrest of a person or using or changing another compulsory procedural measure are not subject to appeal. In all other cases article 234 applies: "all parties to a proceeding, other citizens and organizations have the right to appeal against the activities and decisions of a body conducting an inquiry, an investigator, the head of an investigative body, a prosecutor, a judge or a court according to rules determined by the Criminal Procedure Code. The rules for appeals are stipulated in articles 235-236, and for their consideration in articles 238 and 241 of the Code.

Rights and guarantees of persons whose freedoms have been restricted

83. According to the Constitution of Georgia (art. 18) the freedom of a person is inviolable. Arrest or other restriction of individual freedoms is impermissible without a court decision. The detention of a person is permissible in circumstances determined by law and by an official specifically so authorized. The person detained or otherwise restricted in his/her freedom shall be brought before a court not later than 48 hours following his/her detention. If within the following 24 hours the court has not made a decision to arrest him/her or otherwise restrict his/her freedom the person must be released immediately. Physical or mental coercion of a person detained or otherwise restricted in his/her freedom is impermissible. A detained or arrested person must be immediately made aware of his/her rights and the reasons for the restriction of freedom. The detained or arrested person may immediately request the assistance of a lawyer. His/her request should be satisfied. The term of detention of a person who is suspected of committing a crime should not exceed 72 hours and the accused cannot be subjected to pre-trial imprisonment for more than nine months. A person arrested or detained unlawfully has the right to just compensation.

84. Provisions of the Criminal Procedure Code develop the basic requirements of article 18 of the Constitution and are in full compatibility with it. The rules of detention and the rights of detainees are discussed above. Here we draw attention to the measure of compulsion, i.e. arrest. The Criminal Procedure Code says, "nobody can be arrested without an order of a judge or a court decision" and an illegally arrested person is "subject to immediate release" (art. 159). Arrest as a measure of compulsion is used only against persons charged with committing of a crime punishable by restriction of freedom for more than two years. Arrest as a measure of compulsion cannot be used against the ill, (the elderly women over 60, men over 65), women more than 12 weeks' pregnant and women with children is under 1 year of age. Arrest may not be used if a crime is committed by imprudence.

85. The legislation of Georgia retains the guarantees for underaged persons convicted of crimes whose sentences entered into force. From beginning of next year, as mentioned above the penitentiary system will be removed from the Ministry of Internal Affairs and transferred to the Ministry of Justice.

86. The norms for the execution of sentences mentioned in the initial report have not changed. Some amendments have been made in the definitions providing for postponement of a sentence: the case of illness the execution of a sentence can be postponed not only until recovery but until "significant improvement"; for a pregnant women execution of sentence can be postponed until one year after giving birth and for women with infants till the child reaches the age of 2 (art. 607).

87. The provisions allowing release from prison on the ground of serious illness remain in force.

88. The conditions in the penitentiary system of our country can be reviewed from two aspects. On one hand, the rights of convicted people are not violated on purpose; this was confirmed by experts of the Council of Europe who visited Georgia at the end of 1998. But the living conditions of convicts are too far from internationally accepted standards, which is explainable by insufficiency of finances.

89. According to data, on 1 January, 1999 the total number of persons in penitentiaries was 8,200, and 2,200 persons were in investigation isolation. Currently 6,000 convicts are in colonies and 2,200 in investigation isolation. The reduction in numbers was caused by large-scale acts of pardons issued by the President of Georgia in January and May of 1999 which concerned convicts who had committed lesser crimes, especially women, the disabled and underaged persons. The second stage of pardons was carried out at the end of September and 1,864 convicted persons were pardoned by the President of Georgia.

90. While serving terms during 1998, 85 prisoners died from TB, coronary diseases or cancer. Of the four women among them, six committed suicide or were the victims of accidents.

91. In cases of TB infection the convict is put into hospital-colony #9. Last year 767 were put there; 517 recovered and left the hospital, 17 convicts died. Patients suffering from other diseases take courses of treatment in the hospital of the prison. In 1998 2,090 convicts were under treatment; 46 of them died. For each case of death the Procuracy examines the reasons and conditions of death. A thorough medical examination is carried out. When necessary the Procuracy acts on cases. Criminal proceedings were instituted against two staff members of colonies because their negligence caused the death of convicts.

92. At the same time the Penalty Department receives less than half the finances it needs, which influences the quality and amount of food, the level of medical services (lack of medicines, implements, technical means, unsatisfactory sanitary hygienic conditions). Despite repair work (with great financial support from the Red Cross) which is under way on buildings of colonies, conditions improve rather slowly. Most of the repair activities are of a cosmetic character, including partial reconstruction of walls and inner communications.

93. The past practice of releasing of convicts because of illness was beyond criticism.

94. In August 1998 the Ministry of the Interior and the Ministry of Health Protection worked out and issued an Order "On Regulations the qualification of Convicts for Cessation of their Terms on the Basis of Illness". This Order is a serious document which can perfect the practice of release of convicts on the basis of grave illnesses.

**Article 12 (Investigation of possible acts of torture)**

95. According to the new Criminal Procedure Code of Georgia, where there is evidence that crime has been committed a criminal proceedings are instituted (art. 22). Criminal prosecution can be public,

subsidiary, private-public or private (art. 23). Public criminal prosecution is exercised on all types of crime (art. 24, para. I).

96. Public criminal prosecution is exercised by a prosecutor and an investigator on application by a physical or legal person, reports of State bodies or NGOs, and information from the mass media. A body mandated to conduct an inquiry, an investigator and a prosecutor, in the framework of their competence, are obliged to institute public criminal proceedings, take measures to disclose the crime and name the felon. Upon collecting sufficient evidence to institute criminal proceedings against a person, an investigator issues a decision to make a person answerable as an accused and immediately informs a prosecutor. The prosecutor takes a decision on prolongation or cessation of criminal prosecution.

97. On completion of preliminary investigation, in the case where reasonable grounds existence an investigator drafts a bill of indictment which is submitted to a prosecutor for confirmation. After confirmation, one copy is to be given to the accused (art. 24, paras. 2, 4, 5, 7). According to the Law "On Procuracy" (art. 19) during the first instance court trials the prosecutor has to prove the accusation and he/she acts as a public prosecutor. A victim or his/her representative has the right to support a bill of indictment made by a prosecutor. If the prosecutor refuses or changes the accusation the victim and his/her representative have the right to support the previous bill of indictment in court. In such conditions the criminal case is not ended (Criminal Procedure Code, art. 25). Thus, subsidiary criminal prosecution is guaranteed.

98. This is the general scheme of the procedural activities for the investigation of each public crime to which torture belongs. The Criminal Procedure Code (arts. 270-285) particularly stipulates the conditions for carrying out a preliminary investigation, the type (inquiry and preliminary investigation itself), the terms (inquiry – not more than seven days from the institutions criminal proceedings, preliminary investigation – not more than three months) and the rules for charging and changing or refusing to charge a bill of indictment.

99. The Criminal Procedure Code provides grounds for refusal to institute criminal proceedings and criminal prosecution (art. 28).

100. During to review period the institution of criminal proceedings for acts of torture has not been fixed. But the Annual Report of the Public Defender mentions that complaints of this kind are often received by his/her apparatus but making the perpetrator answerable for the crime has not yet been managed. In the report there are two cases of this kind. An arrested person, Mr. D., made a statement that during an interrogation he was beaten so severely that he had to be put into hospital. The Public Defender studied the case and was convinced that the complaint was well-founded. He appealed the Procuracy of Georgia with a recommendation to invest the acts of torture against Mr. D. In its reply the Procuracy of Georgia stated that citizen D. had caused his injuries himself (by hitting his head on the wall). However, Mr. D. also showed traces of trauma in the genital region. Unfortunately, a Public Defender was unable to secure a prompt and impartial investigation of the case. On the second case, citizen T. was cruelly beaten in one of the district departments of the police of Tbilisi for the purpose of gaining evidences on alleged unlawful keeping of arms. Only after the Public Defender's interference was it possible to release the person. After the incident the victim was often visited by policemen threatening that if the victim revealed the fact of the beating he would be dealt with. Scared citizen T. refused to confirm that illegal physical abuse was used towards him, so the act of torture could not be proved.

**Article 13 (The right to appeal)**

101. Article 21 of the Criminal Procedure Code proclaims that all parties to a criminal proceeding, as well as any other person or body, can complain about the activities of the bodies or officials involved in the execution of the case. The body concerned has no right to use a complaint against the complainant, whose interests should be protected by the complaint with exception of cases where

another person or body makes a complaint of a contrary character or while studying the complaint new circumstances are revealed.

102. According to the Criminal Procedure Code all parties to a criminal proceeding, other citizens and organizations may complain against an activity or decision by body mandated to conduct an inquiry, an investigator or the head of an investigative department, a prosecutor a judge or a court (art. 234). A complaint is submitted to the competent State body. The complaint may be in written or oral form; in the latter case it is included in the protocol which is signed by a complainant. A person who doesn't know the language of court proceedings can make a complaint in his/her own language or other language he/she knows. A complaint against an activity or decision during an investigation is transmitted to a prosecutor; a complaint against concerning an activity or decision of a prosecutor is transferred to a higher prosecutor (art. 235).

103. A complaint cannot be dealt with by a body or official whose activity is the subject of the complaint. A body or person considering a complaint is not restricted to the views formed in the complaint and has the right to check the legality and grounds of the appealed decision and, if necessary, to undertake a review of the whole proceedings of the case. The above-mentioned body or person in the framework of its authority, ought immediately to take measures for the restoration of the violated rights and legal interests of the parties to a trial, other persons and organizations (art. 238)

104. Three days from receiving a complaint a prosecutor is obliged to consider it and give an answer to a the complainant on the results of the consideration. In exceptional cases, this can be prolonged to seven days. If the complaint is rejected the complainant has to be informed and the motivation ought to be explained as well as the rules for further appeal (arts. 235, 241). All complainants have the right to appeal to a court if their complaint against the activities of an investigator was rejected by a prosecutor or if the time-limit for considering the complaint has expired. The appeal to a court does not deprive the complainants of the right to complain against the decision of a prosecutor to a higher prosecutor at the same time.

105. Any activity of a body conducting an inquiry, an investigator or a prosecutor that a complainant considers unlawful and groundless may be the subject of a complaint, as well as use of impermissible methods and evidence by the investigation and other activities of investigative bodies violating human rights, freedoms and the legal interests parties to the proceedings. Complaints do not cease the implementation of an appealed decision if a prosecutor does not consider it necessary.

106. An appeal to a court must be submitted not later than two months after a complainant is aware of the decision or activity he/she considers unlawful and groundless. A judge considers a complaint personally, at closed hearing, with the participation of the complainant or his/her representative (a lawyer) and a prosecutor. The complaint may be accepted or fully or partially rejected. (art. 242).

107. According to the "Law on the Public Defender", the Ombudsman has the right to receive and consider complaints of citizens on violation of their rights and freedoms at each stage of an inquiry and preliminary investigation. If a violation is revealed the Public Defender appeals to the competent body or official with a recommendation to restorate the violated rights and monitors the implementation of the recommendation. On completion of consideration of a criminal case at all instances the Public Defender, on receiving a complaint, is authorized to demand all materials concerning case for study. In cases where the Ombudsman finds evidence that violations which can influence the character of a decision (or a verdict) the Ombudsman is authorized to appeal to the competent court instance to retry the case.

108. In the framework of his/her authority complaints are considered by the Deputy Secretary of the National Security Council of Georgia on Human Rights Issues who, as a rule, addresses them to the competent bodies and monitors. their consideration.

109. In the framework of its authority complaints are discussed in the Committee on Human Rights and Ethnic Minorities of the Parliament of Georgia. They are mainly readdressed to the competent bodies and the results of their consideration are monitored.

**Article 14 (Compensation and rehabilitation)**

110. The Criminal Procedure Code consecutively develops provisions of the Constitution presented in the initial report and provides for the rights of victims of torture to fair and adequate compensation.

111. A person who as a result of a crime suffered physical, financial or moral damage has the right to request compensation and for this purpose to bring a civil action during criminal proceedings. Physical damage is compensated as expenses for funerals, medical treatment, prosthetic appliances and medicine expenses, benefits, pensions, and sums contributed for insurance.

112. Moral damage is compensated in money or other forms of property as a damage caused to a victim as a result of a crime including beating, mutilation, distortion or weakening of biological and mental functions or other experiences caused by physical or moral damage. A court determines the amount of compensation in money for moral damage. In the event of the death of the person who suffered from the crime his/her heirs-at-law are entitled to the right to bring and uphold an action (arts. 30, 33).

113. A person restricted in his/her freedom has the right to full compensation of his/her property damage if his/her arrest or detention was illegal or groundless. Physical damage is compensated by the State by payment of a sum compensating expenses on treatment, and reduction or loss of capacity for work in the case when the damage is a result of a violation of the detention regime. Compensation for moral damage can be exercised through an apology in the press or other mass media, and also by compensation in money (art. 165).

114. Illegally convicted or accused persons or persons who were unlawfully subjected to compulsory treatment ought to be restored to his/her rights (rehabilitated) if his/her innocence or the illegality of his/her compulsory treatment is proved (art. 219).

115. Irrespective of the result of the case, the damage caused by unlawful arrest or detention or unlawful committed of a person to a medical institution for forensic examination or other unlawful activities of investigating bodies causing physical and moral damage ought to be compensated (art. 221).

116. If it is proved that the health of a person suffered as a result of violation of the rules of detention, arrest, or his/her placement in a penitentiary, or late provision of medical assistance, the State is obliged to compensate this damage fully. The compensation for damage can be demanded during criminal proceedings or while serving a sentence or up to six months after the end of a term of sentence (art. 224).

117. On receiving information that damage was caused as the result of unlawful activities on the part of, an investigator or prosecutor, the victim has the right to appeal to a court before the completion of the preliminary investigation. The decision of the judge ought to be made within one month. If grounds for rehabilitation are revealed in a court after the conclusion of a case, is the court must recognize the right of the victim to compensation (art. 227).

118. The Criminal Procedure Code also stipulates the orders and conditions for compensation for damage of a person as a result of unlawful activities of officials during criminal proceedings not of concern to this article of the Convention against Torture.

**Article 15 (Statements established to have been made as a result of torture)**

119. The Criminal Procedure Code contains a number of provisions reflecting the requirements of this article and is in complete correspondence with the constitutional guarantees presented in the initial report. Below we mention provisions of the Criminal Procedure Code with reference to articles. Thus, evidence drawn in violation of the law have no legal force (art. 7). Article 10, "Presumption of innocence", completely reflects the substance of this commonly declared principle, which is present in the legislation of Georgia for the first time. Court supervision over procedural activities involving restriction of the constitutional rights and freedoms of citizens during investigation is established. A suspect, an accused and other parties to the proceedings have the right to appeal against the rejection by an investigator or prosecutor of their complaint or allegation (art. 15).

120. A confession by the accused, if not proved by other evidence, is not sufficient for conviction. Evidence can be obtained without any kind of coercion. Physical or psychological coercion or blackmail for the purpose of obtaining evidences is impermissible (arts. 19, 119). Any evidence in the case obtained by means of violation of legally determined rules or by means of violence, threat, blackmail or abuse is considered impermissible and is to be withdrawn from the case. At the same time, evidence considered invalid might be permitted on application of the defence (art. 111).

121. The revelation of confessions and evidence obtained by use of unlawful methods, as well as the recognition their invalidity and their withdrawal from out of the case, is guaranteed for all parties to the proceedings equally.

122. The Criminal Code also provides sanctions for use of coercion to obtain evidence; details are described in the initial report.

**Article 16 (Other forms of cruel, inhuman or degrading treatment or punishment)**

123. According to article 136 of the Criminal Procedure Code, a person against whom any means of legal physical compulsion is used maintains his/her constitutional status, citizenship and right to subjectivity and he/she is defendable by the State. A detained or arrested person put into a medical institution for forensic expertise has the right to humane treatment. Restrictions used towards him/her cannot be more severe than necessary to prevent his/her escape or attempt to impede an attempt to determine the truth in a criminal case.

124. The conditions under which such person is kept ought to provide for a dignified existence, respect his/her honour and dignity and immutability of the person, safeguard his/her health and protect his/her interests. Cruel treatment of detained or arrested persons or use of physical or moral abuse against them is punishable by law.

125. A detained or arrested person or a person put in a medical institution for forensic expertise has the right to meet his/her lawyer in private, to use legislative materials and juridical literature and have papers and stationery for drafting of complaints, applications and other documents. Any form of observation of a meeting of a lawyer and an accused or reading of their private papers is impermissible. Data obtained by violation of these requirements cannot be included in a criminal case as evidence.

126. In exercising such expertise, the use of methods dangerous to life and health or degrading a person's dignity is impermissible.

127. All the above-mentioned produces additional procedural guarantees to the present article of the Convention against Torture. That points to the fact that the legislation of Georgia envisages acts of torture as impermissible and punishable regardless of the degree of cruelty or humiliation.

## ANNEX

1. While considering the initial report of Georgia in 1996 some individual cases were mentioned and the Committee asked the State party to provide information regarding these cases.

2. Nugzar Molodinashvili, Gedevan Gelbakhiani and Victor Domukhovsky were pardoned by the President of Georgia, on solicitation of the Public Defender and the Deputy Secretary of the National Security Council of Georgia on Human Rights Issues, and released from prison. Domukhovsky went to Poland and lives there at the present moment. Molodinashvili and Gelbakhiani participate actively in political and public life of Georgia. These acts of pardon were a part of the policy of reconciliation declared by the President of Georgia. Fifty person - supporters of Gamasakhurdia - have been pardoned by the President of Georgia over the last two years.

Badri Zarandia

3. Criminal proceedings against Badri Zarandia, Gurgen Malania, Gabriel Bendeliani and Murtaz gulua were instituted on 14 May 1994 in the Procurator's office of Zugdidi Region (West Georgia) On 14 November 1994 the case was transferred to the Procurator General's office. The above-mentioned persons were arrested in September and October 1994.

4. On 4 December 1995 the case was referred to the Supreme Court of Georgia. On 3 February the case of Karlo Jichonaia was referred to the Supreme Court of Georgia. These cases were joined and discussed together by the Supreme Court of Georgia.

5. According to the sentence of the Supreme Court of Georgia (17.06.1996) Badri Zarandia was found guilty of committing the crimes envisaged by article 65 (high treason) and article 78 (banditry of the Criminal Code of Georgia and was sentenced to the death penalty. The Presidum of the Supreme Court commuted the death penalty to 15 years' imprisonment.

6. B. Malania, G. Bendeliani and K. Jichonia were found guilty of committing the crimes envisaged by article 105 (premedited murder), article 17 (responsibility for preparation of a crime and attempt to commit a crime), article 104 (premeditated murder committed under serious circumstances) and were accordingly sentenced to 13, 14, and 15 years' imprisonment.

7. Under the sentence of the Supreme Court the cases of M. Gulua and Z. Sherozia were returned for additional investigation. After additional investigation M. Gulua was tried by the Zugdidi court for illegally carrying an automatic weapon and sentenced to seven years' imprisonment on 29 November 1996. Z. Sherozia was released on 29 November 1996. His case is currently under investigation.

8. The investigation gathered the materials and the trial approved doubtless evidence that B. Zarandia was a leader of an armed group and an active participant. The groups had attacked State institutions, persons, railways and motor trunk roads, stole a great amount of State property, murdered people and affected their health.

9. G. Malania, G. Bendeliani and K. Jichonaia were sentenced for premeditated murder and for attempted murder under serious circumstances and other serious crimes. B. Zarandia did not appeal to the court about illegal methods being used against them. G. Malania, G. Bendeliani and K. Jichonaia stated that they were under physical pressure. The court scrupulously studied these statements. The persons in contact with them (including investigators) were interrogated. Other circumstances were examined. The trial excluded the allegations of illegal methods and physical pressure. B. Zarandia, G. Malania, G. Bendeliani and K. Jichonaia are serving their terms in the penitentiary.

10. Badri Zarandia underwent a substantial course of medical treatment. He was operated on three times in the prison hospital. His health condition is satisfactory at the present moment.

Petre Gelbakhiani and Iraki Dokvadze

11. In 1992 a terrorist act took place in Tbilisi which caused the death of 5 innocent people, a 7-year-old child among them. The trial definitely proved Petre Gelbakhiani and Irakli Dokvadze's guilt, according to law. Both of them were sentenced to the death penalty in accordance with the legislation in force at that time. On 24 July 1997 the President of Georgia used his constitutional right and granted pardons to P. Gelbakhiani and I. Dokvadze (under the Decree of the President Pardons were granted as well to all 54 persons under sentence of death at that moment). Capital punishment was commuted to 20 years' imprisonment for all of them.

Zaza Tsiklauri

12. The case of Zaza Tsiklauri was studied very scrupulously. On 18, August 1992 criminal proceedings were instituted on the basis of the statement made on television by the Chairman of the Informational Intelligence Service about illegal methods used against. Z. Tsiklauri. The results of an examination had not given clear proof. The deputy Chairman and the head of the Department of the Committee on Ethnic Minorities and Human Rights, the Chairman of the Human Rights Commission of the State Council of Georgia and a member of this commission visited Z. Tsiklauri on 21 August 1992. Z. Tsiklauri categorically denied any physical abuse. Additional questioning was held but Tsiklauri once again denied that any violence had been used against him. Unfortunately, the court failed to find evidence of the torture of Z. Tsiklauri at that time. In 1997 Z. Tsiklauri was released from prison and has not appealed to the court since then.

13. The Parliament of Georgia took a decision to make a political appraisal of the tragic events of 1991-1992 when President Gamsakhurdia was forcibly overthrown. A special commission was established by the Parliament for this purpose.

14. Taking into consideration that a lot of people have become victims of anarchy and chaos, civil war and domestic conflicts in the country, by the Order of the President of Georgia (No. 487, 20.08.1999) it has been decided to reconsider the cases of convicts detained during the political events of 1991-1992. The Deputy Secretary of the National Security Council on Human Rights Issues is to prepare proposals; consultations with the Council of Europe should be held.

List of annexes *

3. The Constitution of Georgia – in Georgian, Russian and English;
4. The Law "About the Public Defender" – in English;
5. The Law "On General Courts" – in Russian;
6. The Law "On Procuracy – in Russian
7. The Law "On the Constitutional Court" – in Russian;
8. The Decree of the President of Georgia "On Strengthening the Protection of Human Rights in Georgia" – in Russian;
9. The Decree of the President of Georgia "On Strengthening the Protection of Human Rights of Women in Georgia" – in Russian;
10. Annual Report of the Public Defender (1998) – in English.

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* These annexes are available for consultation in the files of the Office of the United Nations High Commissioner for Human Rights